

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: April 27, 2018

TO: Honorable Mayor and Councilmembers

FROM: City Attorney

SUBJECT: Animal Control Services Ordinance: Legal Implications of Labor Peace Agreement Language

At the April 19, 2018, hearing of the City Council’s Budget and Government Efficiency Committee (Committee), the Committee considered a draft ordinance that allowed the City of San Diego (City) to enter into a contract with any public agency, organization, or organizations for the provision of animal services. The Committee requested the City Attorney to review the legality of adding “labor peace language” (defined below) to the municipal code related to the animal control services contract.

The term “labor peace agreement” is a generic concept for agreements between an employer and one or more labor organizations and may describe an agreement with a variety of provisions. Such agreements provide labor organizations access to employees in exchange for relinquishing activities such as picketing or work stoppages, which might otherwise disrupt the employer’s operations.

Generally, labor agreements are governed by the National Labor Relations Act (NLRA). Congress enacted the NLRA in 1935 to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the national economy. *See* National Labor Relations Board (Apr. 25, 2018) relations-act; 29 U.S.C. §§ 151-169. The City is prohibited from regulating activities that the NLRA specifically, or arguably, protects or prohibits. *Chamber of Commerce of U.S. v. Brown*, 554 U.S. 60, 65 (2008). The City is also prohibited from regulating conduct that Congress intended to be left unregulated. *Id.*

For example, there are provisions in the NLRA that may prevent or minimize the City’s ability to include “labor peace language” in the ordinance if it required the public agency or organization to hire employees from a specific union. *See* 29 U.S.C. § 151. Additionally, if the ordinance required the animal services provider to hire the County of San Diego’s former animal services employees, it could implicate equal protection and Privileges and Immunities Clause, but our Office can complete a further evaluation of any such provision.

However, nothing prohibits the City from including an ordinance provision that allows a contractor to voluntarily enter into labor agreements with its own employees. In addition, a provision in an ordinance that requires any provider of animal control services to follow applicable federal and state laws would not run afoul of the NLRA. At a minimum, the City could amend the ordinance with the following language:

§44.0300 San Diego County Animal Control Ordinance Adopted

- (f) The *City* may enter into a contract with any public agency, organization, or organizations for the administration and enforcement of provisions of this Division. The contracting public agency or organization shall comply with all applicable federal, state, and local labor and employment laws. Nothing prohibits the contracting public agency or organization from entering into separate agreements with employees or labor organizations consistent with all applicable labor and employment laws. The contracting public agency or organization shall be the *City*'s designee for purposes of administering and enforcing this Division.

Our Office will work with City Council on any specific language, and with guidance, will help craft some options that are legally permissible.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/ Paige E. Folkman
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Chief Deputy City Attorney

PEF:jdf

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